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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
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11 KINSALE INSURANCE COMPANY, an
12 Arkansas corporation,,
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14 Plaintiff,
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16 vs.
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18 FLAWLESS VAPE WHOLESALE &
19 DISTRIBUTION, INC., a California
20 corporation; TROY HAVENS, an
21 individual;
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23 Defendants.
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Case No.: 8:18-cv-01535-AG

**[Assigned for All Purposes to the Hon.
Andrew J. Guilford, Ctrm 10D]**

PROTECTIVE ORDER

Complaint Filed: 8/28/18

Trial Date: 11/26/19

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or
3 private information requiring special protection from public disclosure and from use
4 for any purpose other than this litigation. Thus, the Court enters this Protective
5 Order. This Order does not confer blanket protections on all disclosures or
6 responses to discovery, and the protection it gives from public disclosure and use
7 extends only to the specific material entitled to confidential treatment under the
8 applicable legal principles. This Order does not automatically authorize the filing
9 under seal of material designated under this Order. Instead, the parties must comply
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1 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern
2 the use at trial of material designated under this Order.

3 **2. DESIGNATING PROTECTED MATERIAL**

4 **2.1 Over-Designation Prohibited.** Any party or non-party who
5 designates information or items for protection under this Order as
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY,”
7 or “HIGHLY CONFIDENTIAL - SOURCE CODE” (a “designator”) must only
8 designate specific material that qualifies under the appropriate standards. To the
9 extent practicable, only those parts of documents, items, or oral or written
10 communications that require protection shall be designated. Designations with a
11 higher confidentiality level when a lower level would suffice are prohibited. Mass,
12 indiscriminate, or routinized designations are prohibited. Unjustified designations
13 expose the designator to sanctions, including the Court’s striking all confidentiality
14 designations made by that designator. Designation under this Order is allowed only
15 if the designation is necessary to protect material that, if disclosed to persons not
16 authorized to view it, would cause competitive or other recognized harm. Material
17 may not be designated if it has been made public, or if designation is otherwise
18 unnecessary to protect a secrecy interest. If a designator learns that information or
19 items that it designated for protection do not qualify for protection at all or do not
20 qualify for the level of protection initially asserted, that designator must promptly
21 notify all parties that it is withdrawing the mistaken designation.

22 **2.2 Manner and Timing of Designations.** Designation under this
23 Order requires the designator to affix the applicable legend (“CONFIDENTIAL,”
24 “HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY,” or “HIGHLY
25 CONFIDENTIAL - SOURCE CODE”) to each page that contains protected
26 material. For testimony given in deposition or other proceeding, the designator shall
27 specify all protected testimony and the level of protection being asserted. It may
28 make that designation during the deposition or proceeding, or may invoke, on the

1 record or by written notice to all parties on or before the next business day, a right to
2 have up to 21 days from the deposition or proceeding to make its designation.

3 2.2.1 A party or non-party that makes original documents or
4 materials available for inspection need not designate them for protection until after
5 the inspecting party has identified which material it would like copied and produced.
6 During the inspection and before the designation, all material shall be treated as
7 HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY. After the inspecting
8 party has identified the documents it wants copied and produced, the producing
9 party must designate the documents, or portions thereof, that qualify for protection
10 under this Order.

11 2.2.2 Parties shall give advance notice if they expect a
12 deposition or other proceeding to include designated material so that the other
13 parties can ensure that only authorized individuals are present at those proceedings
14 when such material is disclosed or used. The use of a document as an exhibit at a
15 deposition shall not in any way affect its designation. Transcripts containing
16 designated material shall have a legend on the title page noting the presence of
17 designated material, and the title page shall be followed by a list of all pages
18 (including line numbers as appropriate) that have been designated, and the level of
19 protection being asserted. The designator shall inform the court reporter of these
20 requirements. Any transcript that is prepared before the expiration of the 21-day
21 period for designation shall be treated during that period as if it had been designated
22 HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY unless otherwise agreed.
23 After the expiration of the 21-day period, the transcript shall be treated only as
24 actually designated.

25 2.3 **Inadvertent Failures to Designate.** An inadvertent failure to
26 designate does not, standing alone, waive protection under this Order. Upon timely
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1 assertion or correction of a designation, all recipients must make reasonable efforts
2 to ensure that the materials is treated according to this Order.

3 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 All challenges to confidentiality designations shall proceed under L.R. 37-1
5 through L.R. 37-4.

6 **4. ACCESS TO DESIGNATED MATERIAL**

7 **4.1 Basic Principles.** A receiving party may use designated material
8 only for this litigation. Designated material may be disclosed only to the categories
9 of persons and under the conditions described in this Order. Attorneys for a party or
10 the party himself / themselves shall not be permitted to use any designated material
11 obtained in this case as proof of the existence or identity of other claims or
12 claimants against Flawless Vape Wholesale and Distribution, Inc. (“Flawless
13 Vape”) in any other case or as a means to seek discovery of the existence or identity
14 of other claims or claimants against Flawless Vape in any other case. Any such
15 evidence or discovery for use in another case must be conducted independently of
16 any information designated as CONFIDENTIAL in this case.

17 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
18 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
19 designator, a receiving party may disclose any material designated
20 CONFIDENTIAL only to:

21 **4.2.1** The receiving party’s outside counsel of record in this
22 action and employees of outside counsel of record to whom disclosure is reasonably
23 necessary;

24 **4.2.2** The officers, directors, and employees of the receiving
25 party to whom disclosure is reasonably necessary, and who have signed the
26 Agreement to Be Bound (Exhibit A);

1 4.2.3 Experts retained by the receiving party's outside counsel
2 of record to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit A);

4 4.2.4 The Court and its personnel;

5 4.2.5 Outside court reporters and their staff, professional jury or
6 trial consultants, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8 4.2.6 During their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the Agreement to Be Bound
10 (Exhibit A); and

11 4.2.7 The author or recipient of a document containing the
12 material, or a custodian or other person who otherwise possessed or knew the
13 information.

14 4.3 **Disclosure of HIGHLY CONFIDENTIAL - ATTORNEY**
15 **EYES ONLY and HIGHLY CONFIDENTIAL - SOURCE CODE Material**
16 **Without Further Approval.** Unless permitted in writing by the designator, a
17 receiving party may disclose material designated HIGHLY CONFIDENTIAL -
18 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL - SOURCE CODE
19 without further approval only to:

20 4.3.1 The receiving party's outside counsel of record in this
21 action and employees of outside counsel of record to whom it is reasonably
22 necessary to disclose the information;

23 4.3.2 The Court and its personnel;

24 4.3.3 Outside court reporters and their staff, professional jury or
25 trial consultants, and professional vendors to whom disclosure is reasonably
26 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and
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1 4.3.4 The author or recipient of a document containing the
2 material, or a custodian or other person who otherwise possessed or knew the
3 information.

4 4.4 **Procedures for Approving or Objecting to Disclosure of**
5 **HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY or HIGHLY**
6 **CONFIDENTIAL - SOURCE CODE Material to In-House Counsel or Experts.**

7 Unless agreed to in writing by the designator:

8 4.4.1 A party seeking to disclose to in-house counsel any
9 material designated HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY must
10 first make a written request to the designator providing the full name of the in-
11 house counsel, the city and state of such counsel's residence, and such counsel's
12 current and reasonably foreseeable future primary job duties and responsibilities in
13 sufficient detail to determine present or potential involvement in any competitive
14 decision-making. In-house counsel are not authorized to receive material designated
15 HIGHLY CONFIDENTIAL - SOURCE CODE.

16 4.4.2 A Party seeking to disclose to an expert retained by
17 outside counsel of record any information or item that has been designated HIGHLY
18 CONFIDENTIAL - ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL -
19 SOURCE CODE must first make a written request to the designator that (1)
20 identifies the general categories of HIGHLY CONFIDENTIAL - ATTORNEY
21 EYES ONLY or HIGHLY CONFIDENTIAL - SOURCE CODE information that
22 the receiving party seeks permission to disclose to the expert, (2) sets forth the full
23 name of the expert and the city and state of his or her primary residence, (3) attaches
24 a copy of the expert's current resume, (4) identifies the expert's current employer(s),
25 (5) identifies each person or entity from whom the expert has received compensation
26 or funding for work in his or her areas of expertise (including in connection with
27 litigation) in the past five years, and (6) identifies (by name and number of the case,
28 filing date, and location of court) any litigation where the expert has offered expert

1 testimony, including by declaration, report, or testimony at deposition or trial, in the
2 past five years. If the expert believes any of this information at (4) - (6) is subject to
3 a confidentiality obligation to a third party, then the expert should provide whatever
4 information the expert believes can be disclosed without violating any
5 confidentiality agreements, and the party seeking to disclose the information to the
6 expert shall be available to meet and confer with the designator regarding any such
7 confidentiality obligations.

8 4.4.3 A party that makes a request and provides the information
9 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
10 identified in-house counsel or expert unless, within seven days of delivering the
11 request, the party receives a written objection from the designator providing detailed
12 grounds for the objection.

13 4.4.4 All challenges to objections from the designator shall
14 proceed under L.R. 37-1 through L.R. 37-4.

15 5. **SOURCE CODE**

16 5.1 **Designation of Source Code.** If production of source code is
17 necessary, a party may designate it as HIGHLY CONFIDENTIAL - SOURCE
18 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

19 5.2 **Location and Supervision of Inspection.** Any HIGHLY
20 CONFIDENTIAL - SOURCE CODE produced in discovery shall be made available
21 for inspection, in a format allowing it to be reasonably reviewed and searched,
22 during normal business hours or at other mutually agreeable times, at an office of
23 the designating party's counsel or another mutually agreeable location. The source
24 code shall be made available for inspection on a secured computer in a secured
25 room, and the inspecting party shall not copy, remove, or otherwise transfer any
26 portion of the source code onto any recordable media or recordable device. The
27 designator may visually monitor the activities of the inspecting party's
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1 representatives during any source code review, but only to ensure that there is no
2 unauthorized recording, copying, or transmission of the source code.

3 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party
4 may request paper copies of limited portions of source code that are reasonably
5 necessary for the preparation of court filings, pleadings, expert reports, other papers,
6 or for deposition or trial. The designator shall provide all such source code in paper
7 form, including Bates numbers and the label “HIGHLY CONFIDENTIAL -
8 SOURCE CODE.”

9 **5.4 Access Record.** The inspecting party shall maintain a record of
10 any individual who has inspected any portion of the source code in electronic or
11 paper form, and shall maintain all paper copies of any printed portions of the source
12 code in a secured, locked area. The inspecting party shall not convert any of the
13 information contained in the paper copies into any electronic format other than for
14 the preparation of a pleading, exhibit, expert report, discovery document, deposition
15 transcript, or other Court document. Any paper copies used during a deposition
16 shall be retrieved at the end of each day and must not be left with a court reporter or
17 any other unauthorized individual.

18 **6. PROSECUTION BAR**

19 Absent written consent from the designator, any individual who receives
20 access to HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY or HIGHLY
21 CONFIDENTIAL - SOURCE CODE information shall not be involved in the
22 prosecution of patents or patent applications concerning the field of the invention of
23 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or
24 other affiliate during the pendency of this action and for one year after its
25 conclusion, including any appeals. “Prosecution” means drafting, amending,
26 advising on the content of, or otherwise affecting the scope or content of patent
27 claims or specifications. These prohibitions shall not preclude counsel from
28 participating in reexamination or *inter partes* review proceedings to challenge or

1 defend the validity of any patent, but counsel may not participate in the drafting of
2 amended claims in any such proceedings.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 **7.1 Subpoenas and Court Orders.** This Order in no way excuses
6 non-compliance with a lawful subpoena or court order. The purpose of the duties
7 described in this section is to alert the interested parties to the existence of this
8 Order and to give the designator an opportunity to protect its confidentiality interests
9 in the court where the subpoena or order issued.

10 **7.2 Notification requirement.** If a party is served with a subpoena
11 or a court order issued in other litigation that compels disclosure of any information
12 or items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL
13 - ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL - SOURCE CODE,
14 that party must:

15 **7.2.1** Promptly notify the designator in writing. Such
16 notification shall include a copy of the subpoena or court order;

17 **7.2.2** Promptly notify in writing the party who caused the
18 subpoena or order to issue in the other litigation that some or all of the material
19 covered by the subpoena or order is subject to this Order. Such notification shall
20 include a copy of this Order; and

21 **7.2.3** Cooperate with all reasonable procedures sought by the
22 designator whose material may be affected.

23 **7.3 Wait for Resolution of Protective Order.** If the designator
24 timely seeks a protective order, the party served with the subpoena or court order
25 shall not produce any information designated in this action as CONFIDENTIAL,
26 HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY, or HIGHLY
27 CONFIDENTIAL - SOURCE CODE before a determination by the court where the
28 subpoena or order issued, unless the party has obtained the designator's permission.

1 The designator shall bear the burden and expense of seeking protection of its
2 confidential material in that court.

3 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED**
4 **MATERIAL**

5 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
6 designated material to any person or in any circumstance not authorized under this
7 Order, it must immediately (1) notify in writing the designator of the unauthorized
8 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
9 designated material, (3) inform the person or persons to whom unauthorized
10 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
11 to have such person or persons execute the Agreement to be Bound (Exhibit A).

12 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
13 **OTHERWISE PROTECTED MATERIAL**

14 When a producing party gives notice that certain inadvertently produced
15 material is subject to a claim of privilege or other protection, the obligations of the
16 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
17 This provision is not intended to modify whatever procedure may be established in
18 an e-discovery order that provides for production without prior privilege review
19 pursuant to Federal Rule of Evidence 502(d) and (e).

20 **10. FILING UNDER SEAL**

21 Without written permission from the designator or a Court order, a party may
22 not file in the public record in this action any designated material. A party seeking
23 to file under seal any designated material must comply with L.R. 79-5.1. Filings
24 may be made under seal only pursuant to a court order authorizing the sealing of the
25 specific material at issue. The fact that a document has been designated under this
26 Order is insufficient to justify filing under seal. Instead, parties must explain the
27 basis for confidentiality of each document sought to be filed under seal. Because a
28 party other than the designator will often be seeking to file designated material,

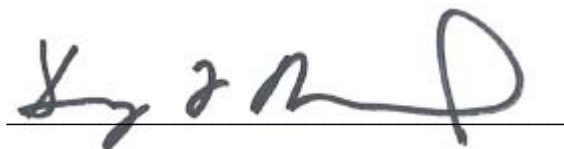
1 cooperation between the parties in preparing, and in reducing the number and extent
2 of, requests for under seal filing is essential. If a **receiving party's** request to file
3 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then
4 the receiving party **may file the material in the public record** unless (1) **the**
5 **designator** seeks reconsideration within four days of the denial, or (2) as otherwise
6 instructed by the Court.

7 **11. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, each party shall return
9 all designated material to the designator or destroy such material, including all
10 copies, abstracts, compilations, summaries, and any other format reproducing or
11 capturing any designated material. The receiving party must submit a written
12 certification of the designator by the 60-day deadline that (1) identifies (by category,
13 where appropriate) all the designated material that was returned or destroyed, and
14 (2) affirms that the receiving party has not retained any copies, abstracts,
15 compilations, summaries, or any other format reproducing or capturing any of the
16 designated material. This provision shall not prevent counsel from retaining an
17 archival copy of all pleadings, motion papers, trial, deposition, and hearing
18 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
19 reports, attorney work product, and consultant and expert work product, even if such
20 materials contain designated material. Any such archival copies remain subject to
21 this Order.

22 IT IS SO ORDERED

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24 DATED: February 22, 2019



Honorable Douglas F. McCormick

United States Magistrate Judge

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EXHIBIT A
AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Protective Order that was issued by the United States
District Court for the Central District of California on _____ [date] in the case of
_____ [insert formal name of the
case and the number and initials assigned to it by the court]. I agree to comply with
and to be bound by all the terms of this Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
for contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Protective Order to any person or entity
except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing this Order, even if
such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Order.

Date: _____
City and State where sworn and signed: _____

Printed name: _____
[printed name]
Signature: _____
[signature]